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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 558

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, A CORPORATION,

Petitioner,

vs.

VIRGINIA BEARDSLEE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX.

	PAGE
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement of the case	2
Reasons for granting the writ	4
Conclusion	12
Appendix A. Statutes	13
Appendix B. Opinion below	16

CITATIONS.

Cases.

Cross v. Zurich Gen. Acc. & Liab. Ins. Co., 184 F. 2d 609, 611, 612 (C. A. 7th, 1950) 11

Equitable Life Assurance Society of U. S. v. Maloney, 85 F. Supp. 212, 215 (E. D. Mo., 1948) 7

Erie Railroad Co. v. Tompkins, 304 U. S. 64; 58 S. Ct. 817; 82 L. Ed. 1188 (1938) 12

First National Bank of Jersey City v. Fleming, et al., 10 F. R. D. 159, 160 (N. J., 1950) 7

Hooker v. New York Life Ins. Co., 66 F. Supp. 313, 318 (N. D. Ill., 1946) 11

Hunter v. Federal Life Ins. Co., 111 F. 2d 551, 556 (C. C. A. 8th, 1940) 7

John Hancock Mut. Life Ins. Co. v. Kraft, 200 F. 2d 952, 953, 954 (C. A. 2d, 1953) 5, 6, 7

Mallone v. Fahey, 117 F. Supp. 259, 275 (S. D. Calif., 1953) 7

Massachusetts Mut. Life Ins. Co. v. Weinress, 47 F. Supp. 626, 633 (N. D. Ill., 1942)..... 7

Metropolitan Life Ins. Co. v. Segaritis, 20 F. Supp. 739, 741 (E. D. Pa., 1937).....7, 9

Schaberg v. John Hancock Mut. Life Ins. Co., 304 Ill. App. 576; 26 N. E. 2d 733 (1940)..... 11

Wade v. Victory Mut. Life Ins. Co., 384 Ill. 555, 563; 51 N. E. 2d 704 (1943)..... 11

Woodruff v. City of Chicago, 394 Ill 542; 69 N. E. 2d 287 (1946) 11

Statutes.

Federal Statutes:

Title 28, U. S. Code, Section 1335.....
.....3, 4, 5, 6, 7, 9, 10, 13, 14

Illinois Statutes:

Illinois Rev. Stat. (1953)

c. 73, par. 767, section 155 .....10, 11, 14

c. 74, par. 2 .....10, 11, 15

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VIRGINIA BEARDSLEE,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, John Hancock Mutual Life Insurance Company, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on November 3, 1954.

OPINION BELOW.

The opinion of the Court of Appeals (*infra,* Appendix B, pp. 16-23), is reported in 216 F. 2d 457.

JURISDICTION.

The judgment of the Court of Appeals was entered on November 3, 1954 (R. 95; *infra,* p. 16). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED.

1. Whether under the Federal Interpleader Act the daughter of a policyholder, with whom he was living at the time of his death, who paid his medical and burial expenses, who had possession of the policy and who advised the insurance company of the above facts and complained that her father had been prevented from making her the beneficiary of the policy by misinformation given him by the Company's agent, was a claimant who "may claim" the policy proceeds as against the policyholder's estranged wife, the designated beneficiary.

2. Whether, if the daughter is not such a claimant, the action of an insurance company in filing a Bill of Interpleader in lieu of making payment to the estranged wife, was *ipso facto,* unreasonable and vexatious under Illinois law so as to justify the imposition by the Federal Court of a penalty against the insurance company in the form of interest and attorney's fees.

STATUTES INVOLVED.

The statutory provisions involved are Sec. 1335 of the Federal Interpleader Act, 28 U. S. C., as amended; Illinois Revised Statutes, 1953, Chapter 73, "Insurance"; par. 767, sec. 155 and Chapter 74, "Interest," par. 2. They are printed in Appendix A, *infra,* pp. 13-15.

STATEMENT.

This action was a bill of interpleader in the United States District Court for the Northern District of Illinois, Eastern Division, filed October 8, 1952 by Petitioner against Virginia Beardslee, a resident of Illinois, widow of the insured, and Geraldine Farrell, a resident of California, daughter of the insured, under the Federal Interpleader Act (R. 3-19). Summonses were served upon both de-

fendants but only one, Virginia Beardslee, the widow, appeared and answered (R. 24-30). Upon the widow's motion for judgment on the pleadings made on November 17, 1953 (R. 45), the daughter having been only recently defaulted (R. 44), the district court found that the daughter, Geraldine Farrell, was not an "adverse claimant" and that Petitioner's bill of interpleader was not well-founded (R. 74, 75).

The district court then entered judgment in favor of the widow, Virginia Beardslee, and in addition to disposing of the fund which Petitioner had deposited in the Registry of the Court (R. 23, 80-81), entered judgment against Petitioner for attorney's fees and interest (R. 76-78) on the ground that the Petitioner was guilty of an unreasonable and vexatious delay of payment (R. 74-77). Petitioner appealed from that portion of the order allowing attorney's fees and interest.

The district judge filed no written opinion.

The Court of Appeals affirmed the order of the district court, except that it ruled (Appendix B, *infra*, p. 23) that the date from which interest should be computed should be changed from January 25, 1952 (death of the insured) to March 12, 1952 (date when the policy was finally surrendered to Petitioner by the daughter).

The decision of the Court of Appeals was that the daughter was not a "claimant" within the meaning of that portion of Section 1335 of Title 28 U. S. Code, which portion was added to the Federal Interpleader Act by the 1948 amendment. [This statute is printed in Appendix A, *infra*, pp. 13-14.] The court held that the statute which now reads: "(1) Two or more adverse claimants, of diverse citizenship as defined in Section 1332 of this title, are claiming *or may claim* to be entitled to such money * * *" (1948 amendment, italics ours), is limited, so that, in the words of the court, "to justify an insurance company in bringing such an action the claims must be of more sub-

stance than the alleged claim of the defendant Geraldine Farrell [daughter] on which the plaintiff here relied" (Appendix B, *infra*, p. 20).

The Court of Appeals further held (Appendix B, p. 22) that because the Petitioner filed its bill of interpleader, it was *ipso facto* guilty of vexatious and unreasonable delay and refusal to pay within the meaning of the pertinent Illinois statutes respecting interest and attorney's fees [Appendix A, pp. 14-15].

In its opinion the Court of Appeals, in effect, concurred in the district court's finding. It held that, in the absence of a formal claim filed by the daughter, the burden of determining the existence of a possible legal claim of the daughter was on the Company. It further held that the Petitioner filed its bill of interpleader at its peril. It held that if the district court in its analysis of the facts found in retrospect—as it did find—that the daughter was not a person who "may claim to be entitled" and had no possible legal claim to the policy proceeds, the Company would be penalized with interest and attorney's fees for filing the interpleader suit.

REASONS FOR GRANTING THE WRIT.

1. The judgment below whittles away at rights given by an important Federal Statute, the Federal Interpleader Act, Section 1335, as amended in 1948, and is in conflict with the cases decided by district courts and courts of appeal both before and since the passage of the 1948 amendment. The opinion of the Court of Appeals did not discuss or distinguish those apparently contrary decisions cited in Petitioner's brief in that court or attempt to define the extent of the applicability of the words "or may claim," introduced by the 1948 amendment, except as quoted above. The result is that the exact meaning of

the statute as presently written is doubtful. This decision has placed a cloud upon the statute which should be removed in order that the decisions of the various courts of appeal and district courts may be uniform. The decision has narrowly limited a right given by the Congress which was intended to be a broad right—not a narrow one.

2. Clearly, the question presented is of great importance in the insurance industry, particularly to life insurance companies, which are daily faced with similar problems, in which not only actual formal claims are made but also interests in policy proceeds are informally asserted by persons in different states and are frequently followed by litigation. The extent of the protection afforded to the companies by the expanded language of the Federal Interpleader Act inserted in 1948 should properly be settled and defined by this Court in order that the courts, which must render the decisions in cases presently pending in various circuits, may properly be guided and so that future situations arising throughout the nation, which appear to come within the purview of the Act, may be handled uniformly, expeditiously and safely without attendant penalty attaching to the stakeholder, who acts in reliance upon this wording in the Act. The exact question here presented does not appear to have been considered by the Supreme Court since the passage of the 1948 amendment to Section 1335.

In 1953, the Second Circuit Court of Appeals in deciding the case of *John Hancock Mutual Life Ins. Co.* v. *Kraft*, 200 F. 2d 952, on facts somewhat similar to the facts in the instant case, reached a result, which is, in its import, in conflict with the present decision.

If the decision of the Court of Appeals is permitted to stand, it will amount to a judicial "whittling away" of the protection specifically granted by the Act. By the present decision's limiting effect upon the statutory wording

in question, stakeholders, for whose benefit the Act was passed, may now decide only at their peril who is a person who "*may claim* to be entitled" before daring to invoke the Act and to file bills of interpleader. Clarification of the meaning of this statute is, therefore, of great importance not only to life and other insurance companies, but also to banks and other potential stakeholders, who are directly affected by it.

3. The decision of the court below is believed to be erroneous. The conflicting decisions (which give effect to the true spirit of the Federal Interpleader Act), such as that in the Second Circuit Court of Appeals in *John Hancock Mutual Life Ins. Co.* v. *Kraft*, 200 F. 2d 952 (C. A. 2d 1953), are believed to be correct. Although the *Kraft* case was a diversity suit brought under Section 1332 rather than under Section 1335 (because the adverse claimants were both residents of New York) and did not involve the propriety of the allowance of attorney's fees and interest, the case did involve the question of the joinder of the insured's widow not as a formal claimant, but as what may be called a "may-claimant" on the basis of her letter written to the Company. The question was resolved in favor of allowing interpleader. Chief Judge Swan wrote the well-reasoned opinion, in which he discussed the point at page 953. In reciting the pertinent facts, he said:

> "Immediately after the insured's death his widow notified the insurance company not to pay any policies on her husband's life as she claimed rights in them by reason of having given her husband $42,000 'for making me beneficiary on his policies.' After probate of the insured's will and issuance of letters testamentary to the executors, they demanded payment of the policies."

The executors of the insured's estate attacked the order allowing interpleader.

Judge Swan stated further as the Court's opinion (pp. 953-954):

> "The argument is unsound that the complaint is insufficient to show jurisdiction even for an equitable interpleader because the widow's claim is not against the insurance company but against the insured's estate. She claims that in consideration of money received by her husband from her he promised to make her the beneficiary of his life insurance policies. If she succeeds in establishing this, the policies may be subjected to a trust in her favor and the insurance company, with knowledge of her claim, could not safely pay the executors. * * * The stakeholder should not be obliged at its peril to determine which of two claimants has the better claim. * * * In an interpleader action, the jurisdiction of the court is not dependent on the merits of the claims of the defendants. *Hunter* v. *Federal Life Ins. Co.*, 8 Cir. 111 F. 2d 551, 556."

The cited decision of the Eighth Circuit Court of Appeals in *Hunter* v. *Federal Life Ins. Co.* was rendered in 1940.

Throughout the reported cases it is uniformly held that the Federal Interpleader Act should be liberally rather than narrowly construed, *Massachusetts Mutual Life Ins. Co.* v. *Weinress*, 47 F. Supp. 626, 633 (N. D. Ill. 1942). As will be seen, liberal construction was the rule even prior to the addition of the 1948 language, *"or may claim"*, to the statute and should certainly be no less the rule now. *Mallone* v. *Fahey*, 117 F. Supp. 259, 275 (S. D. Calif. 1953); *Equitable Life Assurance Society of the U. S.* v. *Maloney*, 85 F. Supp. 212, 215 (E. D. Mo. 1948). The purpose of the Act is to enable the stakeholder to rid himself "of the vexation and expense of resisting adverse claims," [as well as possible claims] "even though he believes that only one of them is meritorious." *Metropolitan Life Ins. Co.* v. *Segaritis*, 20 F. Supp. 739, 741 (E. D. Pa. 1937); *First National Bank of Jersey City* v. *Fleming*, 10 F. R. D. 159, 160 (N. J. 1950).

The court below characterized the letter received by Petitioner from Geraldine Farrell as a "plea for help", rather than a "claim of right" (Appendix B, *infra* p. 22). Such a characterization is a matter of definition and interpretation. The burden of making that determination is precisely what the Federal Interpleader Act intended to shift from the stakeholder to the court.

Petitioner was faced with a situation which it and all other life insurance companies face on numerous occasions.

The Petitioner had received a formal claim on its regular form from Virginia Beardslee, the named beneficiary, the estranged widow of the deceased policyholder, *who did not surrender the policy in question.* Thus the widow's claim was imperfect under the provisions of the policy, which required surrender of the policy in order to make the death benefits payable (R. 9). More than a month later, the Company received the letter mentioned in the Court's opinion from the daughter, Geraldine Farrell (R. 15-19) *who was the one who surrendered the only existing policy*—a duplicate issued on a lost policy affidavit (R. 56). The Company also received from the named beneficiary, Virginia Beardslee, residing in Chicago, written directions to pay Geraldine Farrell and the undertaker, both in California, a substantial portion of the insurance proceeds (R. 37). These were only the obvious facts with which the Petitioner was faced but they were by no means the only factors it had to consider.

In such a situation, where the human element was also present, Petitioner was obliged to consider not only the letter received from the insured's daughter in California indicating her strong dissatisfaction with the fact that the policy was still payable to her father's estranged wife living in Chicago, but, also, Petitioner was compelled to weigh the fact that the daughter was in physical possession of the policy and that she might very well later claim a

pledge or assignment from her father, in reliance upon which she had obligated herself to pay his funeral expenses. That the daughter was living with her father in California, while the wife was in Chicago would give credence to such a claim. The daughter's subsequent refusal to agree to accept the amount offered by the wife in her written directions to Petitioner (R. 37, 39) necessarily heightened the apprehension that the daughter would press a claim for the policy proceeds.

There can be no question but that had Geraldine Farrell completed one of Petitioner's regular claim forms she would have been an "adverse claimant", not as a person who "may claim", but as one who did claim, irrespective of the merits of her claim. *Metropolitan Life Ins. Co.* v. *Segaritis*, 20 F. Supp. 739, 741 (E. D. Pa. 1937).

Faced with the obvious facts and these human element factors, the Company decided that it could not safely ignore the possible adverse claim and possible suit by the daughter, any more than it could have done so, if Geraldine Farrell had submitted a formal claim on Petitioner's regular form instead of having written a letter.

The Petitioner, therefore, acted in good faith in concluding from all of the circumstances that the daughter was a person who "may claim to be entitled" to the proceeds.

Unless the language thus added to Section 1335 in 1948, covers situations in which a stakeholder faced with such facts and circumstances can join as parties all adverse persons who *may*, in the judgment of the stakeholder, assert interests in a fund or in proceeds arising out of a policy of insurance, then the *"may-claim"* provision of the Federal Interpleader Act becomes nugatory. If the only basis for filing an interpleader action is limited to cases of actual assertion of claims, the protection for a

stakeholder obviously intended to be afforded by this new language added in 1948 is withdrawn.

Finally, we submit that the ruling of the court below completely misinterprets the Federal Interpleader Act by applying a strict, narrow construction, which nullifies the spirit and intention of the Act and wrongfully penalizes the stakeholder who in good faith has sought the protection afforded by it.

4. The second and separate error in the decision of the Court of Appeals was its application of the Illinois statutes relating to interest and attorneys' fees in a manner conflicting with decisions of the Illinois courts.

The Court of Appeals, having determined that the daughter was not a claimant within the meaning of the Federal Interpleader Act, concluded that *ipso facto* Petitioner's action in filing its bill of interpleader and depositing the policy proceeds with the registry of the District Court in lieu of paying the same to the estranged widow was as a matter of law unreasonable and vexatious. Thus the Court stated in its opinion (Appendix B, p. 22):

> "Since Mrs. Farrell [the daughter] was not a claimant * * * the District Court properly found that the delay * * * was vexatious and unreasonable * * *."

Having so characterized Petitioner's action, the Court proceeded to affirm the assessment of interest and attorneys' fees against Petitioner. Since there is no provision for such allowances in the Federal Interpleader Act, the Court, of necessity, relied on the Illinois statutes pertaining thereto and decided a question of Illinois law contrary to the decisions of the Illinois courts.

The pertinent Illinois statutes are set forth in Appendix A, (*infra*, pp. 14-15). These statutes have prior to the present decision been followed by Federal courts sitting

in Illinois. *Hooker* v. *New York Life Ins. Co.*, 66 F. Supp. 313, 318 (N. D. Ill., 1946); *Cross* v. *Zurich Gen. Accid. & Liab. Ins. Co.*, 184 F. 2d 609, 611, 612 (C. A. 7th, 1950).

The Illinois cases hold, first, that being in derogation of common law, these statutes should be strictly construed, and, second, that allowances under these statutes must be supported by prior factual determinations. *Schaberg* v. *John Hancock Mut. Life Ins. Co.*, 304 Ill. App. 576; 26 N. E. 2d 733 (Abst. decision 1940); *Wade* v. *Victory Mutual Life Ins. Co.*, 384 Ill. 555, 563; 51 N. E. 2d 704 (1943). See also: *Woodruff* v. *City of Chicago*, 394 Ill. 542; 69 N. E. 2d 287 (1946).

No facts were found by the court showing that the Petitioner was guilty of unreasonable or vexatious delay of payment, because the motion for judgment was decided on the pleadings. Therefore, it was inaccurate for the Court of Appeals to state (Appendix B, p. 23):

> "The Plaintiff [Petitioner] has been able to answer the claim on its merits".

This is simply not true and could not be so in view of the fact that the matter was heard on a motion for judgment on the pleadings.

The unjust by-product of the conclusion that the daughter was not an adverse claimant was the assessment of a penalty against Petitioner for what can, from even the most strict analysis of the bill of interpleader, be classed as nothing more than an error of judgment.

The action of the Court of Appeals in affirming the imposition of a penalty against the Petitioner without any evidence that the Petitioner was guilty of an unreasonable and vexatious delay of payment is directly contrary to the Illinois cases holding that this question is a question of fact and the action of the court is therefore a violation

of the doctrine of *Erie Railroad Co.* v. *Tompkins,* 304 U. S. 64 (1938).

CONCLUSION.

Because the court below has restricted the Federal Interpleader Act in violation of the language and the spirit of that Act and in conflict with salutary decisions of other Federal courts giving a broad and useful construction to this Act of Congress, and because in imposing a penalty the court below has departed from state court decisions, we submit that a writ of certiorari should issue.

Respectfully submitted,

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January 24, 1955.

APPENDIX A.

Statutes Involved.

28 U. S. CODE, SECTION 1335 (EFFECTIVE SEPTEMBER 1, 1948).

§ 1335. Interpleader.

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurace, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, **are claiming or may claim to be entitled** to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the

titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another. June 25, 1948, c. 646, 62 Stat. 931 [Emphasis supplied].

ILLINOIS REVISED STATUTES, 1953, c. 73, "INSURANCE", PAR. 767, SEC. 155.

Attorney Fees.) In any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, if the company has brought suit to cancel the policy or policies or refused upon demand prior to the commencement of the action to pay the amount of the loss, and it appears to the court that such suit or refusal is vexatious and without reasonable cause, the court may allow to the party who by the finding of the court or jury is entitled to prevail against the company, reasonable attorney fees, as a part of the taxable costs in the action and in addition to all other costs, but such allowance shall not exceed any one of the following amounts:

(a) twenty-five per centum of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;

(b) five hundred dollars;

(c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.

(2) Where there are several policies insuring the same insured against the same loss whether issued by the same or by different companies, the court may fix the amount of the allowance so that the total attorney fees on account of one loss shall not be increased by reason of the fact that the insured brings separate suits on such policies.

ILLINOIS REVISED STATUTES, 1953, c. 74, "INTEREST", PAR. 2, SEC. 2.

Creditors shall be allowed to receive at the rate of five (5) per centum per annum for all moneys after they become due on any bond, bill, promissory note, or other instrument of writing; on money lent or advanced for the use of another; on money due on the settlement of account from the day of liquidating accounts between the parties and ascertaining the balance; on money received to the use of another and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment.

APPENDIX B.

Opinion Below.

In the

United States Court of Appeals

For the Seventh Circuit

No. 11097. OCTOBER TERM AND SESSION, 1954.

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, *Plaintiff-Appellant,*
vs.
VIRGINIA BEARDSLEE, *Defendant-Appellee.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

November 3, 1954.

Before FINNEGAN, SWAIM and SCHNACKENBERG, *Circuit Judges.*

SWAIM, *Circuit Judge.* This action was started under 28 U. S. C. A. Sec. 1335 by the plaintiff, John Hancock Mutual Life Insurance Company, a Massachusetts corporation, when, on October 8, 1952, it filed in the District Court for the Northern District of Illinois a bill of interpleader against the widow of Clarence Beardslee, Virginia Beardslee, a resident and citizen of Illinois, and against one Geraldine M. Farrell, a daughter of Clarence Beardslee, who was a resident and citizen of California. The plaintiff insurance company had, on November 26, 1943, issued to Clarence Beardslee an insurance policy by the terms of

which the company agreed that upon due proof of Beardslee's death and the surrender of the policy it would pay $1,000.00 to the beneficiary. The beneficiary named in the policy at the time it was issued was Geraldine M. Trumbull, the daughter of the insured, whose name by a subsequent marriage became Geraldine M. Farrell. The beneficiary on this policy was changed back and forth several times between the daughter and the wife, but at the time of the death of the insured, on January 24, 1952, the beneficiary named in the policy was the wife, Virginia K. Beardslee.

The bill of interpleader recited that on the affidavit of the insured stating that the original policy had been lost, the company, on July 27, 1950, had issued a duplicate policy; that on January 24, 1952, the insured died; that on February 28, 1952, the company received at its home office a claim for the proceeds of the policy from the defendant Virginia Beardslee; and that on March 18, 1952, the plaintiff received a letter from the defendant Geraldine M. Farrell in which, according to the bill of interpleader, the defendant Farrell claimed "an interest in and to the proceeds of said Policy No. M-827317." A copy of this letter was attached to the complaint as Plaintiff's Exhibit 3.

The bill of interpleader also stated that the defendant Virginia Beardslee, on September 5, 1952, had commenced an action in the Circuit Court of Cook County, Illinois, to recover the proceeds of the policy from the insurance company. The bill of interpleader recited that at the time of the death of the insured the amount which became due on the policy was $847.00; that the company was then, and at all times since the furnishing of the proof of death of the insured had been, ready, willing and able to pay to the person legally entitled to receive same, the amount due under said policy, but that the company was a mere stakeholder between the two defendants, was ignorant of the respective rights of the defendants and could not determine

without hazard to itself which one of the defendants was legally entitled to receive the proceeds of the policy. The plaintiff therefore prayed that the defendants be ordered to interplead and to settle between themselves which defendant was entitled to the insurance money; that the court issue an order enjoining and restraining the defendants and each of them, until the further order of the court, from instituting or prosecuting any petition, suit or proceeding against the plaintiff in any state court or in any other federal court on account of the policy of insurance on the life of Clarence Beardslee; and that upon final hearing, the said defendants be perpetually enjoined and restrained from prosecuting any suit or proceeding against the plaintiff on account of said insurance policy.

The defendant Virginia Beardslee filed an answer to the bill of interpleader in which she alleged that the defendant Geraldine M. Farrell did not have and was not entitled to any interest in the policy of insurance or in the proceeds of the policy, and did not assert any legal right, title or interest in and to the insurance policy or the proceeds thereof; and, therefore, denied that there were two or more adverse claimants to the proceeds of the insurance policy and stated that she, the defendant Beardslee, was the only bona fide and legal claimant to said funds. In this answer the defendant Beardslee also denied that the plaintiff had at any time since the furnishing of proof of death of the insured been willing to pay the proceeds due upon the insurance policy, and also denied that the plaintiff was a mere stakeholder having no interest in the controversy and ignorant of the respective rights of the defendants. The answer further denied that there was any legal doubt by the plaintiff as to the right of this defendant to the said funds or as to the nullity of the claim of the defendant Geraldine M. Farrell. In her answer to the bill of interpleader the defendant Virginia Beardslee also cited

the Illinois statutes authorizing the collection by the beneficiary of interest and attorney's fees in a suit by an insured against an insurance company, the attorney's fees to be collected as costs of the suit, where the company had vexatiously refused to pay the insurance without reasonable cause.

On November 10, 1953, Geraldine M. Farrell, having failed to appear and defend in this action, was, on motion of the defendant Virginia Beardslee, found and adjudged to be in default.

A few days later the defendant Beardslee moved for a judgment on the pleadings, demanding judgment for the principal amount of $847.00; attorney's fees in the amount of $211.75, to be charged and taxed against the plaintiff as costs pursuant to Chapter 73, Paragraph 767, Section 155, of the Illinois Revised Statutes, Ill. State Bar Ass'n. Edition 1953; and judgment for interest in the sum of $74.10, being interest on the principal sum from January 24, 1952, to and including October 24, 1953, at the rate of five per cent per annum. The motion also asked that an order be entered quashing and dissolving the injunction which enjoined her from proceeding with her action on the insurance policy then pending in the Circuit Court of Cook County, Illinois.

Pursuant to this motion, an order was entered on December 7, 1953, finding that there was due to the defendant Beardslee the principal sum of $847.00 on the policy; that the defendant Beardslee was the sole beneficiary under said policy and was entitled to all of the benefits thereunder; that she had made due proof of her claim upon the forms provided by the insurance company; that the defendant Farrell had no right, title or interest to any of the benefits under the policy of insurance; that the refusal of the plaintiff to pay Virginia Beardslee the principal sum of $847.00 was vexatious and without reasonable cause

and that, therefore, the defendant Beardslee was entitled to recover from the plaintiff the sum of $200.00 as reasonable attorney's fees as a part of the taxable costs in addition to all other costs; and that the said defendant was also entitled to interest on the principal amount due under the policy at the rate of five per cent per annum from January 25, 1952 to December 4, 1953, which amounted to $77.65.

If both defendants here were claimants to the proceeds of the policy the plaintiff's bill of interpleader was authorized by 28 U. S. C. A. Sec. 1335. But the defendant Virginia Beardslee contends that the defendant Geraldine Farrell was not actually a claimant within the terms of that Act, and that the action of the insurance company in bringing the bill of interpleader and in delaying the payment to Virginia Beardslee on the policy was vexatious and unreasonable within the meaning of the Illinois statutes; and that, therefore, the defendant Virginia Beardslee was entitled to judgment for attorney's fees and interest on the amount due on the policy from the date of the death of the insured to the date of the judgment.

It is true that to justify a bill of interpleader the conflicting claims against the funds need not be such claims as can finally be proved in court. *Hunter* v. *Federal Life Ins. Co.*, 8 Cir., 111 F. 2d 551; *Metropolitan Life Ins. Co.* v. *Segaritis*, 20 F. Supp. 739. However, to justify an insurance company in bringing such an action the claims must be of more substance than the alleged claim of the defendant Geraldine Farrell on which the plaintiff here relied.

The insured here was the father of Mrs. Farrell and was making his home with her in California at the time of his death. It is also true that Mrs. Farrell had possession of the duplicate insurance policy; but the letter received from her which the plaintiff attached to its bill of

interpleader, as an exhibit, thereby became a part of that pleading and, therefore, was subject to examination and consideration on a motion for a judgment on the pleadings. That letter, received by the plaintiff on March 17, 1952, did not indicate that Mrs. Farrell thought she had any legal right to collect any part of the proceeds on the policy on her father's life. The letter shows that she knew that the beneficiary named in the policy at the time the insured died was the wife, Mrs. Beardslee. Mrs. Farrell's letter states that she and her father talked about again changing the beneficiary because he and Mrs. Beardslee were then separated but that shortly after his arrival in California he became ill again and was taken to the hospital. The letter then states: "At this time we asked Mr. Donovan, Assistant Mgr. of this branch, if the beneficiary could be changed, and were advised that it could not be done." Then Mrs. Farrell says that, after the death of her father, her husband went to the branch office and found that the beneficiary could have been changed. Her letter indicates that the proceeds of the policy would have been just about "enough for medical, hospital and burial expenses." The letter states that another representative of the company had written to some one in Roseland, a suburb of Chicago, to try to arrange with her father's widow, Mrs. Beardslee, "to reimburse us for the expenses involved." The letter then says, "I have the policy hoping that in some way you will be able to help us defray the expense of $690.50 for medical and burial expenses. * * * I believe that the purpose of the policy was for just such a condition." Mrs. Farrell's letter then said she was "sure that [if] Mr. Donovan had been honest as to the facts of the change of beneficiary. This letter wouldn't have had to be written."

At the time Mrs. Farrell wrote this letter she was in possession of the duplicate policy which clearly provided that the beneficiary of the policy might be changed. The

only possible legal claim by Mrs. Farrell to any money from the plaintiff insurance company intimated in her letter was a possible tort action based on the alleged misinformation given to her by an employee of the insurance company as to the possibility of again changing the beneficiary on the policy. There is not the slightest suggestion that Mrs. Beardslee had anything to do with the alleged misinformation. Even if it were true, as Mrs. Farrell suggests, that the policy would have been changed to make her the beneficiary except for the alleged misinformation given her by plaintiff's employee, the fact remains that Mrs. Beardslee's name was still on the policy as beneficiary at the time of her husband's death and Mrs. Beardslee was, therefore, entitled to be paid the proceeds of the policy. Any possible tort action that Mrs. Farrell might have brought, based on the alleged misinformation given her by an employee of the plaintiff, could not have changed the contract embodied in the policy of insurance. Instead of amounting to a claim of right her letter could only be considered as a plea for help.

Since Mrs. Farrell was not a claimant within the meaning of the Interpleader Act, the District Court properly found that the delay by the company in paying the proceeds of the policy to Mrs. Beardslee was vexatious and unreasonable, and that she was, therefore, entitled to recover reasonable attorney's fees as part of the costs of the action, and was also entitled to recover interest at five per cent per annum on the principal amount of $847.00 from March 12, 1952, the date the proofs of loss and the policy were delivered to the company.

Appellant claims that the District Court did not have jurisdiction to grant attorney's fees and interest. It is its contention that when jurisdiction is obtained solely because of the federal interpleader statute, the court is limited in the amount of its decision to the fund which

was paid into court. Appellant relies principally on *Hagan* v. *Central Avenue Dairy, Inc.*, 9 Cir., 180 F. 2d 502, 503, from which it quotes:

> " 'It would be a startling conclusion, we think, to give to Rule 13(g) and the Interpleader statute the effect of enlarging the jurisdiction of a court to create rights going beyond those to the fund which is the subject of the interpleader action. Such a construction would go far beyond the situation which called for the Interpleader statute in the first place.' "

This case is readily distinguished from the one at bar. In the *Hagan* case, one of the codefendants was served but made no appearance in the suit. When the other codefendant filed a cross-claim against him for damages resulting from the transaction which gave rise to the interpleader suit, the court refused the cross-claim because it did not have personal jurisdiction over the cross-defendant. In the case at bar, the additional claim is made against the plaintiff and there can be no question as to personal jurisdiction. The plaintiff has been able to answer the claim on its merits.

It is a familiar rule of equity that once a court has assumed jurisdiction it will grant full relief. It has been so held with regard to the federal interpleader statute. *American Surety Co.* v. *Calcasieu Oil Co.*, 3 F. Supp. 939, 941.

The judgment of the District Court is AFFIRMED, except that the date from which interest is to be calculated is March 12, 1952.